

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION**

**UNITED STATES OF AMERICA**

**v.**

**ELIZABETH PICKRELL**

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§

**CRIMINAL NO. 6:10cr127(3) LED-JDL**

**REPORT AND RECOMMENDATION OF  
UNITED STATES MAGISTRATE JUDGE**

On June 16, 2014, the Court conducted a hearing to consider the government's petition to revoke the supervised release of Defendant. The government was represented by Jim Noble, Assistant United States Attorney for the Eastern District of Texas, and Defendant was represented by Ken Hawk.

On November 2, 2011, Defendant pled guilty before U.S. District Judge Leonard Davis to the offense of access device fraud, a Class C felony. This offense carried a statutory maximum imprisonment term of ten years. The United States Sentencing Guideline range, based on a total offense level of 19 and a criminal history category of I, was 30 to 37 months. Defendant received a downward departure and was sentenced to 24 months of imprisonment followed by 3 years of supervised release subject to the standard conditions of release, plus special conditions to include drug treatment, mental health treatment, and restitution. Defendant completed the term of imprisonment and began her period of supervised release on June 17, 2013.

In pertinent part, the terms of Defendant's supervised release required her to report to the probation officer as directed by the Court or probation officer and submit a truthful and complete written report within the first five days of each month; and to refrain from excessive use of alcohol and not to purchase, possess, use, distribute, or administer any narcotic or other

controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician. In its petition, the government alleges that Defendant violated the term of supervised release when she failed to report for the month of April 2014; and when she submitted a urine sample on March 25, 2014 that tested positive for methamphetamine and marijuana.

Based on 5th Circuit case law, the Court can find that illicit drug use constitutes possession. Therefore, should the Court find by a preponderance of the evidence that Defendant violated the conditions of supervised release by possessing methamphetamine, Defendant will be in violation of Texas Health and Safety Code § 481.115 and have committed a Grade B violation. U.S.S.G. § 7B1.1(a). Upon a finding of a Grade B violation, the Court shall revoke a term of supervision. U.S.S.G. § 7B1.3(a)(1). Considering Defendant's criminal history category of I, the Guideline imprisonment range for a Grade B violation is 4 to 10 months. U.S.S.G. § 7B1.4(a).

According to U.S.S.G. § 7B1.1(a), if the Court find by a preponderance of the evidence that Defendant violated the conditions of supervised release by failing to report, possession of marijuana and by using methamphetamine and marijuana, Defendant will have committed a Grade C violation. Upon a finding of a Grade C violation, the Court may revoke or extend a term of supervision and/or modify the conditions of supervision. U.S.S.G. § 7B1.3(a)(2). Considering Defendant's criminal history category of I, the Guideline imprisonment range for a Grade C violation is 3 to 9 months. U.S.S.G. § 7B1.4(a).

At the hearing, Defendant pled true to the allegations above. The government recommended custody for a term of 7 months with no supervised release to follow.

Pursuant to the Sentencing Reform Act of 1984, the Court **RECOMMENDS** that Defendant Elizabeth Pickrell be committed to the custody of the Bureau of Prisons for 7 months

with no supervised release to follow. The Court further recommends incarceration at FCI Bryan, Texas.

Defendant has waived her right to object to the findings of the Magistrate Judge in this matter so the Court will present this Report and Recommendation to U.S. District Judge Leonard Davis for adoption immediately upon issuance.

**So ORDERED and SIGNED this 20th day of June, 2014.**

  
JOHN D. LOVE  
UNITED STATES MAGISTRATE JUDGE